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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II**

IN THE MATTER OF:

Associated Universities, Inc.
Upton, NY 11973

EPA ID Number NY7890008975

Proceeding under Section 3008
of the Resource Conservation
and Recovery Act, 42 U.S.C.
§ 6928

COMPLAINT, COMPLIANCE
ORDER AND NOTICE OF
OPPORTUNITY FOR HEARING

Docket No. II RCRA-91-0204

COMPLAINT

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act ("RCRA") and the Hazardous and Solid Waste Amendments of 1984, ("HSWA"), 42 U.S.C. § 6901 et seq. ("RCRA" or the "Act"). Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), provides that the Administrator of the United States Environmental Protection Agency ("EPA") may, if certain criteria are met, authorize a state to operate a hazardous waste program in lieu of the federal program.

The State of New York received final authorization to administer its hazardous waste program on May 29, 1986. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. EPA retains primary responsibility for requirements promulgated pursuant to HSWA, until the State of New York amends its program to incorporate the HSWA requirements and receives authorization to enforce such requirements.

Complainant in this proceeding, Conrad Simon, Director of the Air & Waste Management Division of the EPA, Region II, has been duly delegated the authority to institute this action. The Complainant is issuing this COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING to the Respondent, Associated Universities, Inc., as a result of an inspection conducted on or about March 4, 1991 through March 8, 1991, which revealed that Respondent has violated or is in violation of one or more requirements of Subtitle C of RCRA, the New York State Environmental Conservation Law, and the regulations promulgated thereunder concerning the management of hazardous waste.

1. Respondent is Associated Universities, Inc. Respondent operates a facility known as the Brookhaven National Laboratory ("the facility") located at Upton, New York 11973, on behalf of the Department of Energy, Brookhaven Area Office.

2. Respondent is a "person," as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and in 6 NYCRR 370.2(b)(122).

3. Respondent manages hazardous waste as a generator and interim status treatment, storage, or disposal facility as those terms are defined in 40 C.F.R. § 260.10 and in 6 NYCRR 370.2(b).

4. Pursuant to Section 3010 of RCRA, by notification dated November 18, 1980, the Department of Energy, Brookhaven Area Office informed EPA that it conducts activities at its facility involving "hazardous waste" as that term is defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and in 40 C.F.R. § 261.3 and 6 NYCRR 371.1(d).

5. Title 40 C.F.R. Parts 262, 265, 268, and 270 set forth federal standards for hazardous waste generators and interim status treatment, storage or disposal facilities. Title 6 NYCRR Parts 370, 372, and 373 establish New York State requirements for hazardous waste generators and interim status treatment, storage or disposal facilities.

6. The Department of Energy, Brookhaven Area Office ("DOE") submitted a Part A permit application to EPA on November 21, 1980. DOE informed EPA in its Part A application that the "operator" of the facility, as that word is defined in 40 C.F.R. § 260.10 and 6 NYCRR 370.2(b)(112), was the Associated Universities, Inc. DOE submitted a Part B permit application to EPA on April 4, 1985.

7. On or about March 4, 1991 through March 8, 1991, an inspection ("the inspection") of the facility was conducted pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, by duly-designated representatives of EPA to determine compliance with

specific state and federal regulations for the generation and management of hazardous waste.

COUNT 1

8. Complainant realleges each allegation contained in paragraphs "1" through "7", inclusive, as if fully set forth herein.

9. Pursuant to 40 C.F.R. § 265.174 and 6 NYCRR 373-2.9(e), the owner or operator of a treatment, storage or disposal facility must conduct weekly inspections of hazardous waste container storage areas, looking for leaks and for deterioration of containers caused by corrosion or other factors.

10. Complainant's inspection of the facility revealed that Respondent stored approximately 24 (55 gallon) drums of scintillation vials (D001 - storage date 12/31/89) in Building 448. No aisle space was provided between drums, which were stored 4 drums deep by 4 drums wide by 2 drums high, abutted. Hence, access to, and inspection of, inner drums was not possible.

11. Respondent's failure to conduct weekly inspections of hazardous waste containers storage areas is a violation of 40 C.F.R. § 265.174 and 6 NYCRR 373-2.9(e).

COUNT 2

12. Complainant realleges each allegation contained in paragraphs "1" through "7", inclusive, as if fully set forth herein.

13. Pursuant to 40 C.F.R. § 265.32(d) and 6 NYCRR 373-3.3(c)(4), the owner or operator of a treatment, storage or disposal facility must equip his facility with water at adequate pressure and volume to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems, unless none of the hazards posed by waste handled at the facility could require that particular type of equipment.

14. Complainant's inspection of the facility revealed that Respondent maintained no fire abatement equipment other than portable fire extinguishers in Buildings 444, 448 and 483. As drums of ignitable hazardous waste are routinely stored in these buildings, an adequate water supply or foam producing equipment is required in the event of a fire.

15. Respondent's failure to equip Buildings 444, 448 and 483 of its facility with water at adequate pressure and volume to supply water hose streams, or foam producing equipment, or

automatic sprinklers, or water spray systems, is a violation of 40 C.F.R. § 265.32(d) and 6 NYCRR 373-3.3(c)(4).

COUNT 3

16. Complainant realleges each allegation contained in paragraphs "1" through "7", inclusive, as if fully set forth herein.

17. Pursuant to 40 C.F.R. § 262.34(a)(2) and 6 NYCRR 373-1.1(d)(1)(iii)(c)(2), a generator who treats, stores, or disposes of hazardous waste on-site must mark containers of hazardous waste with the date upon which each period of accumulation begins.

18. Complainant's inspection of Respondent's facility revealed that containers of hazardous waste stored in several areas of the facility were not marked to indicate the accumulation start dates. Specifically, one (55 Gallon) drum of slimicide (D001) stored in Building 444, four (55 Gallon) drums of scintillation vials (D001) stored in Building 448, one (55 Gallon) drum of carbon tetrachloride (U211) stored in Building 483, one (100 gram) bottle of fluorobenzene (D001) stored in Building 725, and one (1 Gallon) bottle of hydrochloric acid (D002) and three (0.25 pint) bottles of formic acid (U123) stored in Building 801 were not marked to indicate the accumulation start dates.

19. Respondent's failure to mark containers of hazardous waste with accumulation start dates is a violation of 40 C.F.R. § 262.34(a)(2) and 6 NYCRR 373-1.1(d)(1)(iii)(c)(2).

COUNT 4

20. Complainant realleges each allegation contained in paragraphs "1" through "7", inclusive, as if fully set forth herein.

21. Pursuant to 40 C.F.R. § 262.34(a)(3) and 6 NYCRR 373-1.1(d)(1)(iii)(c)(3), the owner or operator of a treatment, storage or disposal facility, while accumulating containers of hazardous waste on-site, must label each such container with the words "Hazardous Waste".

22. Complainant's inspection of the facility revealed that Respondent had failed to label with the words "Hazardous Waste" several containers of hazardous waste that were being accumulated on-site. Specifically, one (55 Gallon) drum of freon (F001) stored in Building 928, one (100 gram) bottle of fluorobenzene (D001) stored in Building 725, one (3 Kilogram) bottle of 1,4-

Dioxane (U108) stored in Building 815, and one (1 Gallon) bottle of hydrochloric acid (D002) and three (0.25 pint) bottles of formic acid (U123) stored in Building 801 were not labeled with the words "Hazardous Waste".

23. Respondent's failure to mark containers of hazardous waste with the words "Hazardous Waste" while being accumulated at the facility constitutes a violation of 40 C.F.R. § 262.34(a)(3) and 6 NYCRR 373-1.1(d)(1)(iii)(c)(3).

COUNT 5

24. Complainant realleges each allegation contained in paragraphs "1" through "7", inclusive, as if fully set forth herein.

25. Pursuant to 40 C.F.R. § 270.71(a)(2) and 6 NYCRR 373-1(f)(1)(ii), an interim status treatment, storage, or disposal facility shall not employ processes not specified in Part A of its permit application.

26. Complainant's inspection of the facility revealed that Respondent had stored hazardous waste for periods greater than 90 days in an area of the facility that was not included in Respondent's Part A application. Specifically, one (8 ounce) bottle of hydrochloric acid/nitric acid (D002 - accumulation start date 11/3/90) and one (1 pint) bottle of carbon tetrachloride (U211 - accumulation start date 7/1/90) had been stored in Building 725, which was not designated as a storage area in Respondent's Part A permit application, for 121 days and 246 days, respectively, at the time of the inspection.

27. Respondent's storage of hazardous waste for periods greater than 90 days in an area not designated in its Part A permit application is a violation of 40 C.F.R. § 270.71(a)(2) and 6 NYCRR 373-1(f)(1)(ii).

COUNT 6

28. Complainant realleges each allegation contained in paragraphs "1" through "7", inclusive, as if fully set forth herein.

29. Pursuant to 40 C.F.R. § 265.173 and 6 NYCRR 373-3.9(d)(1), the owner or operator of a treatment, storage or disposal facility must keep containers of hazardous waste closed during storage, except when it is necessary to add or remove waste.

30. Complainant's inspection of Respondent's facility revealed that Respondent had failed to keep a container of hazardous waste closed during storage. Specifically, one (55 Gallon) drum of paint thinner/lacquer (D001) in the Paint Shop storage trailer was left open, fitted with a funnel.

31. Respondent's failure to keep a container of hazardous waste closed during storage is a violation of 40 C.F.R. § 265.173 and 6 NYCRR 373-3.9(d)(1).

COUNT 7

32. Complainant realleges each allegation contained in paragraphs "1" through "7", inclusive, as if fully set forth herein.

33. Pursuant to RCRA Section 3005(b)(2), the owner or operator of a treatment, storage or disposal facility must identify in its permit application each site at which hazardous waste or the products of treatment of hazardous waste will be disposed, treated, transported to, or stored.

34. Pursuant to 40 C.F.R. § 270.71(a)(2), an interim status facility shall not employ processes not specified in its Part A permit application. 40 C.F.R. § 270.71(b) further states that during interim status, owners or operators shall comply with the interim status standards of 40 C.F.R. Part 265.

35. Complainant's inspection of the facility revealed that Respondent had released untreated groundwater through the operation of an Aquifer Remediation Project, in which recovery wells discharged directly to an unlined recharge basin situated in the facility. The discharged groundwater had been contaminated with chlorinated organic solvents as a result of past spillage and leakage of containers of listed hazardous wastes stored at the facility. The release of untreated groundwater occurred during the winter mode of operation of the Aquifer Remediation Project, which was conducted 122 days per year during 1987 through 1990.

36. Complainant's inspection of the facility revealed that Respondent had released aerated groundwater through the operation of an Aquifer Remediation Project, in which recovery wells fitted with spray aeration nozzles discharged directly to an unlined recharge basin situated in the facility. The discharged groundwater had been contaminated with chlorinated organic solvents as a result of past spillage and leakage of containers of listed hazardous wastes stored at the facility. The release of aerated groundwater occurred during the summer mode of operation of the Aquifer Remediation Project, which was conducted 243 days per year during 1987 through 1989.

37. Respondent's discharge of groundwater containing hazardous waste to an unlined recharge basin not specified in its Part A permit application is a violation of RCRA Section 3005(b)(2) and 40 C.F.R. § 270.71.

COUNT 8

38. Complainant realleges each allegation contained in paragraphs "1" through "7", inclusive, as if fully set forth herein.

39. 40 C.F.R. § 268.30 sets forth waste specific land disposal prohibitions for solvent wastes F001 through F005 identified in 40 C.F.R. § 261.31.

40. Complainant's inspection of the facility revealed that Respondent had discharged, through operation of an Aquifer Remediation Project, restricted hazardous waste (untreated groundwater contaminated with chlorinated organic solvents as a result of past spillage and leakage of containers of listed hazardous wastes (F001/F002) stored at the facility) to an unlined recharge basin.

41. Complainant's inspection of the facility revealed that Respondent had discharged, through operation of an Aquifer Remediation Project, restricted hazardous waste (aerated groundwater contaminated with chlorinated organic solvents as a result of past spillage and leakage of containers of listed hazardous wastes (F001/F002) stored at the facility) to an unlined recharge basin.

42. Respondent's land disposal of groundwater containing F001/F002 restricted hazardous wastes in an unlined recharge basin is a violation of 40 C.F.R. § 268.30.

PROPOSED CIVIL PENALTY

Based on the facts alleged in this Complaint and upon those factors which the complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3) (as discussed in the RCRA Civil Penalty Policy), including the seriousness of the violations, any good faith efforts by the respondent to comply with applicable requirements, and any economic matters accruing to the Respondent, as well as such other matters as justice may require, the Complainant proposes that the Respondent be assessed a civil penalty of \$682,623.00 for the violations alleged in this Complaint. A penalty calculation worksheet and narrative explanation to support the penalty figure for each violation cited in this Complaint is included in Attachment 1, below.

Matrices employed in the determination of individual and multi-day civil penalties are included in Attachments 2 and 3, below.

<u>Count 1</u>	For violation of 6 NYCRR 373-2.9(e) and 40 C.F.R. § 265.174.	\$250.00
<u>Count 2</u>	For violation of 6 NYCRR 373-3.3(c)(4) and 40 C.F.R. § 265.32(d).	\$9,973.00
<u>Count 3</u>	For violation of 6 NYCRR 373-1.1(d)(1)(iii)(c)(2) and 40 C.F.R. § 262.34(a)(2).	\$250.00
<u>Count 4</u>	For violation of 6 NYCRR 373-1.1(d)(1)(iii)(c)(3) and 40 C.F.R. § 262.34(a)(3).	\$250.00
<u>Count 5</u>	For violation of 6 NYCRR 373-2(a)(8)(ii) and 40 C.F.R. § 270.71(a)(2).	\$250.00
<u>Count 6</u>	For violation of 6 NYCRR 373-3.9(d)(1) and 40 C.F.R. § 265.173.	\$250.00
<u>Count 7</u>	For violation of RCRA Section 3005(b)(2) and 40 C.F.R. § 270.71(a)(2).	\$335,700.00
<u>Count 8</u>	For violation of 40 C.F.R. § 268.30.	\$335,700.00
TOTAL PROPOSED PENALTY		\$682,623.00

COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of RCRA, Complainant herewith issues the following Compliance Order against Respondent:

1. Respondent shall within two days of receipt of this Order maintain sufficient aisle space in all hazardous waste container storage areas to allow the conduct of inspections of those areas. Respondent shall conduct weekly inspections in all hazardous waste container storage areas, so as to comply with Federal and State Regulations.

2. Respondent shall within 45 days of receipt of this Order submit plans to EPA which detail the construction or implementation of a water supply or other device to provide fire control, in accordance with Federal and State regulations, for all buildings or structures in the facility in which ignitable wastes are stored. Said plans shall include certifications of compliance with all applicable insurance and fire codes. Construction or implementation of the water supply or fire control device described in said plans must be completed within six months of this Order.
3. Respondent shall within two days of receipt of this Order mark all containers of hazardous waste in storage at the facility (with the exception of those containers in satellite accumulation areas) with the date upon which each period of accumulation begins.
4. Respondent shall within two days of receipt of this Order mark all containers of hazardous waste in storage at the facility with the words "Hazardous Waste".
5. Respondent shall within 10 days of receipt of this Order cease to store hazardous wastes on site for more than the permitted time period, so as to comply with Federal and State regulations.
6. Respondent shall immediately upon receipt of this Order maintain all containers of hazardous waste at the facility in a closed condition, except when it is necessary to add or remove waste.
7. Respondent shall not operate a surface impoundment or spray aeration device for the treatment, storage, or disposal of hazardous waste without either first obtaining a RCRA permit for such operation or establishing substantive compliance with all applicable RCRA requirements for such operation under the terms of a final (effective) Interagency Agreement with EPA.
8. Respondent shall, within 90 days of receipt of this Order, either submit to EPA closure plans under RCRA for all hazardous waste land disposal units at the facility or present documentation that substantive RCRA closure requirements for such units are included under the terms of a final (effective) Interagency Agreement with EPA.
9. Within 20 days of receipt of this Complaint, Respondent shall submit to EPA written notice of its compliance (accompanied by a copy of any appropriate supporting documentation) or noncompliance for each of the

requirements set forth in paragraphs "1", and "3" through "7", above. If the Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving expeditious compliance with the requirement.

10. Within 45 days of receipt of this Complaint, Respondent shall submit to EPA written notice of its compliance (accompanied by a copy of any appropriate supporting documentation) or noncompliance for each of the requirements set forth in paragraph "2", above. If the Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving expeditious compliance with the requirement.
11. Within 90 days of receipt of this Complaint, Respondent shall submit to EPA written notice of its compliance (accompanied by a copy of any appropriate supporting documentation) or noncompliance for the requirements set forth in paragraph "8", above. If the Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving expeditious compliance with the requirement.
12. Respondent shall submit the above required information and notices to the following addressees:

Mr. George C. Meyer, P.E., Chief
Hazardous Waste Compliance Branch
U.S. Environmental Protection Agency, Region II
26 Federal Plaza, Room 1000F
New York, New York 10278

Mr. Leonard Grossman
Hazardous Waste Compliance Branch
U.S. Environmental Protection Agency, Region II
26 Federal Plaza, Room 1000G
New York, New York 10278

NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA, a violator failing to take required action within the time specified in a Compliance Order is liable for a civil penalty of up to \$25,000 for each day of continued noncompliance. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator whether issued by the State or the Administrator.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in Section 3008(b) of RCRA, and in accordance with EPA's Consolidated Rules of Practices Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, 45 Federal Register 24,360 (April 9, 1980) (a copy of which accompanies this Complaint, Compliance Order, Notice of Opportunity for Hearing), you have the right to request a Hearing to contest any material fact set out in the Complaint, or to contest the appropriateness of the proposed penalty, or the terms of the Compliance Order. (Consistent with the provisions of Section 3008(b) of RCRA, should you request such a public Hearing, notice of the Hearing will be provided and the Hearing will be open to the general public. However, in the absence of such a specific request, public notice of a scheduled Hearing will not be published.)

To avoid being found in default and having the proposed civil penalty assessed and the Compliance Order confirmed without further proceedings, you must file a written Answer to the Complaint, which may include a request for a Hearing. Your Answer must be addressed to the U.S. Environmental Protection Agency, Regional Hearing Clerk, 26 Federal Plaza, New York, New York 10278, and must be filed within 20 days after service of this Complaint, Compliance Order, and Notice of Opportunity for Hearing.

Your answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint, and should contain (1) a clear statement of the facts which constitute the grounds of your defense, and (2) a concise statement of the contentions which you intend to place in issue at the Hearing.

The denial of any material fact, or the raising of any affirmative defense, will be construed as a request for a Hearing. Failure to deny any of the factual allegations in the Complaint will be deemed to constitute an admission of the undenied allegations. Your failure to file a written Answer within 20 days of service of this instrument will be deemed to represent your admission of all facts alleged in the Complaint, and a waiver of your right to a formal Hearing to contest any of the facts alleged by the Complainant. Your default may result in the final issuance of the Compliance Order, and assessment of the proposed civil penalty, without further proceedings.

INFORMAL SETTLEMENT CONFERENCE

Whether or not you request a Hearing, the EPA encourages settlement of this proceeding consistent with the provisions of RCRA. At an informal conference with a representative of the

Complainant you may comment on the charges and provide whatever additional information you feel is relevant to the disposition of this matter, including any actions you have taken to correct the violation, and any other special circumstances you care to raise. The Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with you in such a conference, or to recommend that any or all of the charges be dismissed, if the circumstances so warrant. Your request for any informal conference and other questions that you may have regarding this Complaint, Compliance Order, and Notice of Opportunity for Hearing should be directed to Ms. Amy Chester, Assistant Regional Counsel, Air, Waste & Toxic Substances Branch, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278, telephone (212) 264-4760.

Please note that a request for an informal settlement conference does not extend the 20 day period during which a written Answer and Request for a Hearing must be submitted. The informal conference procedure may be pursued as an alternative to, or simultaneously with, the adjudicatory Hearing procedure. However, no penalty reduction will be made simply because such a conference is held.

Any settlement which may be reached as a result of such conference will be embodied in a written Consent Agreement and Consent Order to be issued by the Regional Administrator. Your signing of such Consent Agreement would constitute a waiver of your right to request a Hearing on any matter stipulated to therein.

Signing of such a Consent Agreement and Consent Order in this matter shall constitute a waiver of the right to request and to obtain a formal Hearing on any matter stipulated to therein. Entering into a settlement through signing of such Consent Agreement and Consent Order and continued compliance with the terms and conditions set forth in both the Consent Agreement and Consent Order, as well as the Compliance Order set forth in this Complaint will terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Entering into a settlement and your continuing compliance with the conditions set forth in the Compliance Order do not extinguish, satisfy or otherwise affect your obligation and responsibility to comply with all other applicable regulations and requirements set forth in, and/or promulgated pursuant to, RCRA and applicable State requirements, and to maintain such compliance.

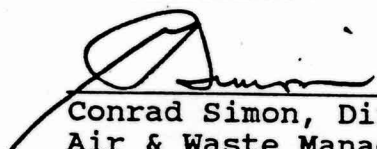
RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, requesting a Hearing or requesting an informal settlement conference, you may choose to comply with the terms of the Compliance Order, and to pay the proposed penalty. In that case, payment should be made by sending a check in the amount of the penalty specified in the "Proposed Civil Penalty" section of this instrument to the Regional Hearing Clerk, EPA - Region II, P.O. Box 360188M, Pittsburgh, PA 15251. A copy of the check should be sent to Ms. Amy Chester, Esq., at the address referenced above. Your check must be made payable to the Treasurer of the United States.

DATE:

June 28, 1991

COMPLAINANT:


Conrad Simon, Director
Air & Waste Management Division
Environmental Protection Agency
Region II

TO: N. P. Samios, Director
Brookhaven National Laboratory
Associated Universities Inc.
Upton, NY 11973

cc: John Middelkoop, Director
Bureau of Hazardous Waste Operations, NYSDEC

bcc: John Gorman, 2AWM-HWC
Amy Chester, 2ORC-AWTS
Laura Livingston, 2OPM-PAB
Andrew Bellina, 2AWM-HWF
Robert Small, WM-527
Leonard Grossman, 2AWM-HWC

CERTIFICATE OF SERVICE

This is to certify that on the day of July 2 1991, I served a true and correct copy of the foregoing Complaint and a copy of the Consolidated Rules of Practice by certified mail to Associated Universities, Inc., Brookhaven National Laboratory, Upton, New York 11973. I hand carried the original and a copy of the foregoing Complaint to the Regional Hearing Clerk.

Doris A. Larn

ATTACHMENT I

PENALTY COMPUTATION WORKSHEET

Facility Name: Associated Universities, Inc.,
Brookhaven National Laboratory

Address: Upton, New York

Requirement Violated: 6 NYCRR 373-2.9(e) and 40 C.F.R. §
265.174 Failure to conduct weekly
inspections of container storage area
(Count 1).

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix.....\$250.00
 - (a) Potential for harm.....MINOR
 - (b) Extent of Deviation.....MINOR
2. Select an amount from the appropriate multi-day matrix cell.....N/A
3. Multiply line 2 by number of days of violation minus 1.....N/A
4. Add line 1 and line 3.....\$250.00
5. Percent increase/decrease for good faith.....N/A
6. Percent increase for willfulness/negligence.....N/A
7. Percent increase for history of noncompliance....N/A
8. Total lines 5 through 7.....N/A
9. Multiply line 4 by line 8.....N/A
10. Calculate economic benefit.....N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.....\$250.00

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Requirement Violated: 6 NYCRR 373-2.9(e) and 40 C.F.R. § 265.174 Failure to conduct weekly inspections of container storage area (Count 1).

1. Gravity Based Penalty

- (a) Potential for Harm - The Potential for Harm present in this violation was determined to be MINOR, since the drums appeared to be in good condition and were stored in an area which was provided with secondary containment.
- (b) Extent of Deviation - The Extent of Deviation present in this violation was determined to be MINOR since weekly inspections of other containers of hazardous waste stored at the facility were conducted, and the number of drums for which inspection was not possible due to abuttal was small.

The applicable cell ranges from \$100.00 to \$499.00. The mid-point cell value was chosen, as the facility is of moderate size and sophistication.

- (c) Multiple/Multi-day - Minor potential for harm and minor extent of deviation invoke the discretionary assessment of multi-day penalties. Multi-day penalties were not assessed in the citation of this violation.

2. Adjustment Factors

- (a) Good Faith - N/A
- (b) Willfulness/Negligence - N/A
- (c) History of Compliance - N/A
- (d) Ability to Pay - N/A
- (e) Environmental Project - N/A
- (f) Other Unique Factors - N/A

- 3. Economic Benefit - The economic benefit resulting from this violation was determined to be negligible.

- 4. Recalculation of Penalty Based on New Information - N/A

PENALTY COMPUTATION WORKSHEET

Facility Name: Associated Universities, Inc.,
Brookhaven National Laboratory

Address: Upton, New York

Requirement Violated: 6 NYCRR 373-3.3(c)(4) and 40 C.F.R.
§ 265.32(d) Failure to provide required
fire abatement equipment (Count 2).

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix.....\$9,499.00
 - (a) Potential for harm.....MODERATE
 - (b) Extent of Deviation.....MAJOR
2. Select an amount from the appropriate multi-day matrix cell.....N/A
3. Multiply line 2 by number of days of violation minus 1.....N/A
4. Add line 1 and line 3.....\$9,499.00
5. Percent increase/decrease for good faith.....N/A
6. Percent increase for willfulness/negligence.....N/A
7. Percent increase for history of noncompliance....5.0%
8. Total lines 5 through 7.....5.0%
9. Multiply line 4 by line 8.....\$9,973.00
10. Calculate economic benefit.....N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.....\$9,973.00

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Requirement Violated: 6 NYCRR 373-3.3(c)(4) and 40 C.F.R. § 265.32(d) Failure to provide required fire abatement equipment (Count 2).

1. Gravity Based Penalty

- (a) Potential for Harm - The Potential for Harm present in this violation was determined to be MODERATE. Respondent's failure to equip the facility with water at adequate pressure and volume to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems poses a significant risk of exposure of humans and other environmental receptors to hazardous waste or constituents in the event of a fire.
- (b) Extent of Deviation - The Extent of Deviation present in this violation was determined to be MAJOR since Respondent did not maintain the required fire abatement equipment at the facility.

The applicable cell ranges from \$8,000.00 to \$10,999.00. The mid-point cell value was chosen, as the facility is of moderate size and sophistication.

- (c) Multiple/Multi-day - Moderate potential for harm and major extent of deviation invoke the mandatory assessment of multi-day penalties. Multi-day penalties were not assessed, however, since failure to provide required fire control equipment at the facility is a one-time occurrence.

2. Adjustment Factors

- (a) Good Faith - N/A
- (b) Willfulness/Negligence - N/A
- (c) History of Compliance - Respondent was previously apprised of its failure to maintain required fire abatement equipment in a June 1990 Tiger Team Assessment conducted by the Department of Energy (Waste Management Compliance Finding Number 2). An upward adjustment of 5.0% is applied to the penalty calculated for this violation.
- (d) Ability to Pay - N/A
- (e) Environmental Project - N/A
- (f) Other Unique Factors - N/A
3. Economic Benefit - The economic benefit resulting from this violation was determined to be negligible.
4. Recalculation of Penalty Based on New Information - N/A

PENALTY COMPUTATION WORKSHEET

Facility Name: Associated Universities, Inc.,
Brookhaven National Laboratory

Address: Upton, New York

Requirement Violated: 6 NYCRR 373-1.1(d)(1)(iii)(c)(2) and 40
C.F.R. § 262.34(a)(2) Failure to mark
accumulation start dates (Count 3).

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix.....\$250.00
 - (a) Potential for harm.....MINOR
 - (b) Extent of Deviation.....MINOR
2. Select an amount from the appropriate multi-day matrix cell.....N/A
3. Multiply line 2 by number of days of violation minus 1.....N/A
4. Add line 1 and line 3.....\$250.00
5. Percent increase/decrease for good faith.....N/A
6. Percent increase for willfulness/negligence.....N/A
7. Percent increase for history of noncompliance....N/A
8. Total lines 5 through 7.....N/A
9. Multiply line 4 by line 8.....N/A
10. Calculate economic benefit.....N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.....\$250.00

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Requirement Violated: 6 NYCRR 373-1.1(d)(1)(iii)(c)(2) and 40 C.F.R. § 262.34(a)(2) Failure to mark accumulation start dates (Count 3).

1. Gravity Based Penalty

(a) Potential for Harm - The Potential for Harm present in this violation was determined to be MINOR. Respondent's failure to mark several containers of hazardous waste with accumulation start dates poses some adverse effect to the statutory purposes for implementing the RCRA program. Hazardous waste is stored at the facility under interim status, for which most of the regulatory requirements were being met at the time of inspection.

(b) Extent of Deviation - The Extent of Deviation present in this violation was determined to be MINOR since most containers of hazardous waste stored at the facility were appropriately marked with accumulation start dates.

The applicable cell ranges from \$100.00 to \$499.00. The mid-point cell value was chosen, as the facility is of moderate size and sophistication.

(c) Multiple/Multi-day - Minor potential for harm and minor extent of deviation invoke the discretionary assessment of multi-day penalties. Multi-day penalties were not assessed, however, since failure to mark the accumulation start date is a one-time occurrence.

2. Adjustment Factors

- (a) Good Faith - N/A
- (b) Willfulness/Negligence - N/A
- (c) History of Compliance - N/A
- (d) Ability to Pay - N/A
- (e) Environmental Project - N/A
- (f) Other Unique Factors - N/A

3. Economic Benefit - The economic benefit resulting from this violation was determined to be negligible.

4. Recalculation of Penalty Based on New Information - N/A

PENALTY COMPUTATION WORKSHEET

Facility Name: Associated Universities, Inc.,
Brookhaven National Laboratory

Address: Upton, New York

Requirement Violated: 6 NYCRR 373-1.1(d)(1)(iii)(c)(3) and 40
C.F.R. § 262.34(a)(3) Failure to mark
containers to identify the contents as
hazardous waste (Count 4).

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix.....\$250.00
 - (a) Potential for harm.....MINOR
 - (b) Extent of Deviation.....MINOR
2. Select an amount from the appropriate multi-day matrix cell.....N/A
3. Multiply line 2 by number of days of violation minus 1.....N/A
4. Add line 1 and line 3.....\$250.00
5. Percent increase/decrease for good faith.....N/A
6. Percent increase for willfulness/negligence.....N/A
7. Percent increase for history of noncompliance....N/A
8. Total lines 5 through 7.....N/A
9. Multiply line 4 by line 8.....N/A
10. Calculate economic benefit.....N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.....\$250.00

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Requirement Violated: 6 NYCRR 373-1.1(d)(1)(iii)(c)(3) and 40 C.F.R. § 262.34(a)(3) Failure to mark containers to identify the contents as hazardous waste (Count 4).

1. Gravity Based Penalty

- (a) Potential for Harm - The Potential for Harm present in this violation was determined to be MINOR. Respondent's failure to mark several containers to identify the contents as hazardous waste poses a some risk of exposure of humans or other environmental receptors to hazardous waste or constituents. Although the containers were not marked to indicate the contents as hazardous waste, the containers were marked with the chemical name, and were stored in areas which were marked to indicate their use for chemical or hazardous waste storage.
- (b) Extent of Deviation - The Extent of Deviation present in this violation was determined to be MINOR since most containers of hazardous waste stored at the facility were appropriately marked to identify the contents as hazardous waste.

The applicable cell ranges from \$100.00 to \$499.00. The mid-point cell value was chosen, as the facility is of moderate size and sophistication.

- (c) Multiple/Multi-day - Moderate potential for harm and minor extent of deviation invoke the discretionary assessment of multi-day penalties. Multi-day penalties were not assessed, since failure to mark containers as hazardous waste is a one-time occurrence.

2. Adjustment Factors

- (a) Good Faith - N/A
(b) Willfulness/Negligence - N/A
(c) History of Compliance - N/A
(d) Ability to Pay - N/A
(e) Environmental Project - N/A
(f) Other Unique Factors - N/A

3. Economic Benefit - The economic benefit resulting from this violation was determined to be negligible.

4. Recalculation of Penalty Based on New Information - N/A

PENALTY COMPUTATION WORKSHEET

Facility Name: Associated Universities, Inc.,
Brookhaven National Laboratory

Address: Upton, New York

Requirement Violated: 6 NYCRR 373-1(f)(1)(ii) and 40 C.F.R. §
270.71(a)(2) Storage of hazardous waste
greater than 90 days in a non-permitted
area (Count 5).

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix.....\$250.00
 (a) Potential for harm.....MINOR
 (b) Extent of Deviation.....MINOR
2. Select an amount from the appropriate multi-day
 matrix cell.....N/A
3. Multiply line 2 by number of days of violation
 minus 1.....N/A
4. Add line 1 and line 3.....\$250.00
5. Percent increase/decrease for good faith.....N/A
6. Percent increase for willfulness/negligence.....N/A
7. Percent increase for history of noncompliance....N/A
8. Total lines 5 through 7.....N/A
9. Multiply line 4 by line 8.....N/A
10. Calculate economic benefit.....N/A
11. Add lines 4, 9 and 10 for penalty amount
 to be inserted into the complaint.....\$250.00

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Requirement Violated: 6 NYCRR 373-1(f)(1)(ii) and 40 C.F.R. § 270.71(a)(2) Storage of hazardous waste greater than 90 days in a non-permitted area (Count 5).

1. Gravity Based Penalty

- (a) Potential for Harm - The Potential for Harm present in this violation was determined to be MINOR. Respondent's storage of hazardous waste greater than 90 days poses some adverse effect to the statutory purposes for implementing the RCRA program.
- (b) Extent of Deviation - The Extent of Deviation present in this violation was determined to be MINOR, since the 90 day storage limit was adhered to by the facility in almost all cases, and the amount of hazardous waste stored greater than 90 days was relatively small.

The applicable cell ranges from \$100.00 to \$499.00. The mid-point cell value was chosen, as the facility is of moderate size and sophistication.

- (c) Multiple/Multi-day - Minor potential for harm and minor extent of deviation invoke the discretionary assessment of multi-day penalties. Multi-day penalties were not assessed in the citation of this violation.

2. Adjustment Factors

- (a) Good Faith - N/A
- (b) Willfulness/Negligence - N/A
- (c) History of Compliance - N/A
- (d) Ability to Pay - N/A
- (e) Environmental Project - N/A
- (f) Other Unique Factors - N/A

- 3. Economic Benefit - The economic benefit resulting from this violation was determined to be negligible.

- 4. Recalculation of Penalty Based on New Information - N/A

PENALTY COMPUTATION WORKSHEET

Facility Name: Associated Universities, Inc.,
Brookhaven National Laboratory

Address: Upton, New York

Requirement Violated: 6 NYCRR 373-3.9(d)(1) and 40 C.F.R. §
265.173 Storage of open container of
hazardous waste (Count 6).

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix.....\$250.00
 - (a) Potential for harm.....MINOR
 - (b) Extent of Deviation.....MINOR
2. Select an amount from the appropriate multi-day matrix cell.....N/A
3. Multiply line 2 by number of days of violation minus 1.....N/A
4. Add line 1 and line 3.....\$250.00
5. Percent increase/decrease for good faith.....N/A
6. Percent increase for willfulness/negligence.....N/A
7. Percent increase for history of noncompliance....N/A
8. Total lines 5 through 7.....N/A
9. Multiply line 4 by line 8.....N/A
10. Calculate economic benefit.....N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.....\$250.00

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Requirement Violated: 6 NYCRR 372.2(a)(8)(ii) and 40 C.F.R. § 265.173 Storage of open container of hazardous waste (Count 6).

1. Gravity Based Penalty

- (a) Potential for Harm - The Potential for Harm present in this violation was determined to be MINOR. Respondent's storage of hazardous waste in an open drum poses some potential for release of hazardous waste or constituents to the environment.
- (b) Extent of Deviation - The Extent of Deviation present in this violation was determined to be MINOR, since all but one container of hazardous waste in storage at the facility was maintained in a closed condition.

The applicable cell ranges from \$100.00 to \$499.00. The mid-point cell value was chosen, as the facility is of moderate size and sophistication.

- (c) Multiple/Multi-day - Minor potential for harm and minor extent of deviation invoke the discretionary assessment of multi-day penalties. Multi-day penalties were not assessed in the citation of this violation.

2. Adjustment Factors

- (a) Good Faith - N/A
- (b) Willfulness/Negligence - N/A
- (c) History of Compliance - N/A
- (d) Ability to Pay - N/A
- (e) Environmental Project - N/A
- (f) Other Unique Factors - N/A

- 3. Economic Benefit - The economic benefit resulting from this violation was determined to be negligible.

- 4. Recalculation of Penalty Based on New Information - N/A

PENALTY COMPUTATION WORKSHEET

Facility Name: Associated Universities, Inc.,
Brookhaven National Laboratory

Address: Upton, New York

Requirement Violated: RCRA Section 3005(b)(2) and 40 C.F.R. §
270.71(a)(2) Discharge of hazardous
waste in an unlined recharge basin
(Count 7).

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix.....\$22,500.00
 (a) Potential for harm.....MAJOR
 (b) Extent of Deviation.....MAJOR
2. Select an amount from the appropriate multi-day
 matrix cell.....\$3,000
3. Multiply line 2 by number of days of violation
 minus 1..(179 x \$3,000).....\$537,000.00
4. Add line 1 and line 3.....\$559,500.00
5. Percent decrease for good faith.....40.0%
6. Percent increase for willfulness/negligence.....N/A
7. Percent increase for history of noncompliance....N/A
8. Total lines 5 through 7.....40.0%
9. Multiply line 4 by line 8.....\$335,700.00
10. Calculate economic benefit.....N/A
11. Add lines 4, 9 and 10 for penalty amount
 to be inserted into the complaint.....\$335,700.00

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Requirement Violated: RCRA Section 3005(b)(2) and 40 C.F.R. § 270.71(a)(2) Discharge of hazardous waste in an unlined recharge basin (Count 7).

1. Gravity Based Penalty

(a) Potential for Harm - The Potential for Harm present in this violation was determined to be MAJOR. Respondent's operation of an unpermitted surface impoundment/land treatment facility poses a substantial potential for release of hazardous waste or constituents to the environment.

(b) Extent of Deviation - The Extent of Deviation present in this violation was determined to be MAJOR, since Respondent did not include its surface impoundment/land treatment facility in its Part A permit application.

The applicable cell ranges from \$20,000.00 to \$25,000.00. The mid-point cell value was chosen, as the facility is of moderate size and sophistication.

(c) Multiple/Multi-day - Major potential for harm and major extent of deviation invoke the mandatory assessment of multi-day penalties. Multi-day penalties were assessed for the minimum 179 day duration.

2. Adjustment Factors

(a) Good Faith - The maximum penalty reduction of 40.0% allowable under the 1990 RCRA Penalty Policy was chosen, as both EPA and the New York State Department of Environmental Conservation had prior knowledge of the aquifer remediation activities at the facility.

(b) Willfulness/Negligence - N/A

(c) History of Compliance - N/A

(d) Ability to Pay - N/A

(e) Environmental Project - N/A

(f) Other Unique Factors - N/A

3. Economic Benefit - Economic benefit was not assessed in this violation, as both EPA and the New York State Department of Environmental Conservation had prior knowledge of the aquifer remediation activities at the facility.

4. Recalculation of Penalty Based on New Information - N/A

PENALTY COMPUTATION WORKSHEET

Facility Name: Associated Universities, Inc.,
Brookhaven National Laboratory

Address: Upton, New York

Requirement Violated: 40 C.F.R. § 268.30 Land disposal of
restricted wastes (Count 8).

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix.....\$22,500.00
(a) Potential for harm.....MAJOR
(b) Extent of Deviation.....MAJOR
2. Select an amount from the appropriate multi-day
matrix cell.....\$3,000.00
3. Multiply line 2 by number of days of violation
minus 1..(179 x \$3000).....\$537,000.00
4. Add line 1 and line 3.....\$595,500.00
5. Percent decrease for good faith.....40.0%
6. Percent increase for willfulness/negligence.....N/A
7. Percent increase for history of noncompliance....N/A
8. Total lines 5 through 7.....40.0%
9. Multiply line 4 by line 8.....\$335,700.00
10. Calculate economic benefit.....N/A
11. Add lines 4, 9 and 10 for penalty amount
to be inserted into the complaint.....\$335,700.00

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Requirement Violated: 40 C.F.R. § 268.30 Land disposal of restricted wastes (Count 8).

1. Gravity Based Penalty

- (a) Potential for Harm - The Potential for Harm present in this violation was determined to be MAJOR. Respondent's land disposal of restricted hazardous waste poses a substantial potential for release of hazardous waste or constituents to the environment.
- (b) Extent of Deviation - The Extent of Deviation present in this violation was determined to be MAJOR, since Respondent disposed of restricted hazardous waste in a (unpermitted) surface impoundment/land treatment facility.

The applicable cell ranges from \$20,000.00 to \$25,000.00. The mid-point cell value was chosen, as the facility is of moderate size and sophistication.

- (c) Multiple/Multi-day - Major potential for harm and major extent of deviation invoke the mandatory assessment of multi-day penalties. Multi-day penalties were assessed for the minimum 179 day duration.

2. Adjustment Factors

(a) Good Faith - The maximum penalty reduction of 40.0% allowable under the 1990 RCRA Penalty Policy was chosen, as both EPA and the New York State Department of Environmental Conservation had prior knowledge of the aquifer remediation activities at the facility.

- (b) Willfulness/Negligence - N/A
- (c) History of Compliance - N/A
- (d) Ability to Pay - N/A
- (e) Environmental Project - N/A
- (f) Other Unique Factors - N/A

- 3. Economic Benefit - Economic benefit was not assessed in this violation, as both EPA and the New York State Department of Environmental Conservation had prior knowledge of the aquifer remediation activities at the facility.

- 4. Recalculation of Penalty Based on New Information - N/A

ATTACHMENT 2
GRAVITY-BASED PENALTY MATRIX

EXTENT OF DEVIATION

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	MAJOR	MODERATE	MINOR
MAJOR	\$ 25,000 TO 20,000	\$ 19,999 TO 15,000	\$ 14,999 TO 3,000
MODERATE	\$ 10,999 TO 8,000	\$ 7,999 TO 5,000	\$ 4,999 TO 3,000
MINOR	\$ 2,999 TO 1,500	\$ 1,499 TO 500	\$ 499 TO 100

ATTACHMENT 3
MULTI-DAY PENALTY MATRIX

EXTENT OF DEVIATION

P O T E N T I A L F O R H A R M		MAJOR	MODERATE	MINOR
	MAJOR	\$ 5,000 TO 1,000	\$ 4,000 TO 750	\$ 3,000 TO 550
	MODERATE	\$ 2,200 TO 400	\$ 1,600 TO 250	\$ 1,000 TO 150
	MINOR	\$ 600 TO 100	\$ 300 TO 100	100